

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT SPOKANE

EMPIRE HEALTH FOUNDATION, a
Washington nonprofit corporation,

Plaintiff,

v.

CHS/COMMUNITY HEALTH SYSTEMS
INC., a Delaware corporation; CHS
WASHINGTON HOLDINGS, LLC, a
Delaware limited liability company;
SPOKANE WASHINGTON HOSPITAL
COMPANY, LLC, a Delaware limited
liability company; and SPOKANE
VALLEY WASHINGTON HOSPITAL
COMPANY, LLC, a Delaware limited
liability company

Defendants.

NO. 2:17-cv-00209

COMPLAINT

I. PARTIES

1. *Empire Health Foundation.* Plaintiff Empire Health Foundation (“Foundation”) is a Washington nonprofit corporation and the largest community foundation in Eastern Washington. It was formed with the proceeds of the sale of Deaconess Medical Center and Valley Hospital and Medical Center (“Hospitals”). The Foundation uses its endowment to create measurable, sustainable health improvements

1 in Eastern Washington, with a particular focus on access to health care by Eastern
2 Washington's lowest income individuals. The Foundation's vision is to transform
3 Eastern Washington into the state's healthiest region. In 2008, the Foundation was
4 assigned all rights and obligations of Empire Health System, the nonprofit corporation
5 which sold the Hospitals to Defendants and then dissolved.

6 2. *CHS/Community Health Systems, Inc.* Defendant CHS/Community
7 Health Systems Inc. ("CHS") is a Delaware corporation that does business in the State of
8 Washington, including Spokane County. In 2008, CHS purchased the Hospitals from
9 Empire Health System. CHS continues to own and operate the Hospitals.

10 3. *CHS Washington Holdings, LLC.* Defendant CHS Washington Holdings,
11 LLC ("Holdings") is a Delaware limited liability corporation, registered to do business
12 in the state of Washington. On information and belief, it is wholly owned by CHS.

13 4. *Spokane Washington Hospital Company, LLC.* Spokane Washington
14 Hospital Company, LLC ("SWHC") is a Delaware limited liability company whose
15 primary business is the ownership and operation of Deaconess Hospital in Spokane,
16 Washington. On information and belief, it is wholly owned and controlled by CHS
17 and/or Holdings.

18 5. *Spokane Valley Washington Hospital Company.* Spokane Valley
19 Washington Company, LLC ("SVWHC") is a Delaware limited liability company whose
20 primary business is the ownership and operation of Valley Hospital in Spokane Valley,
21 Washington. On information and belief, it is wholly owned and controlled by CHS
22 and/or Holdings

23 6. CHS, Holdings, SWHC and SVWHC are referred to herein, collectively, as
24 "Defendants."

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II. JURISDICTION AND VENUE

7. Jurisdiction of this Court arises pursuant to 28 U.S.C. §1332 because the amount in controversy exceeds \$75,000 and the dispute is between citizens of different states.

8. Venue is proper under 28 U.S.C. §1391 because Defendants transact business in Spokane County and a substantial part of the events or omissions giving rise to the claim occurred there.

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III. NATURE OF THE CASE

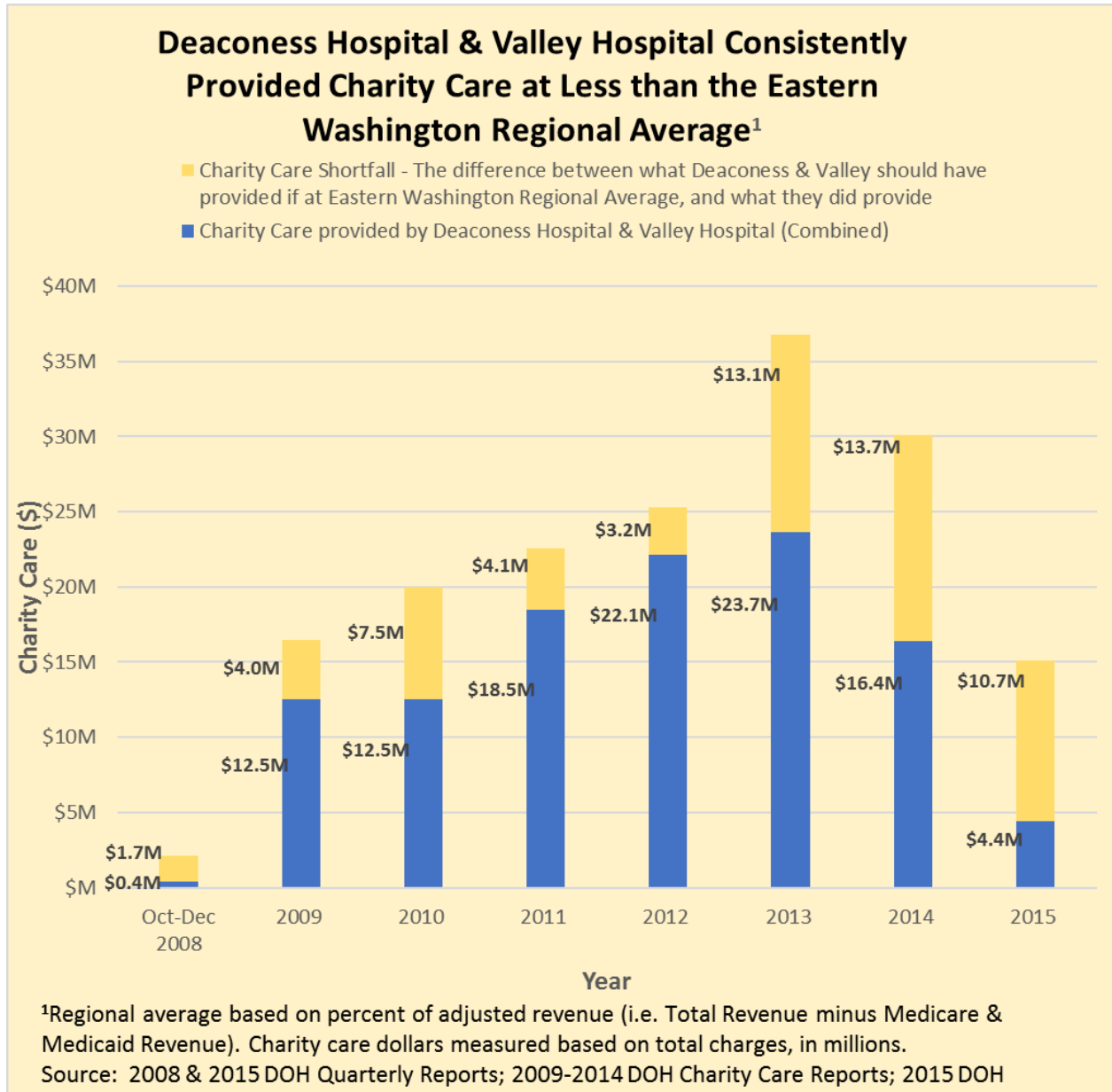
9. The Foundation brings this litigation to enforce the terms and conditions of the Asset Purchase Agreement and related agreements (collectively, the “Agreements”), that govern the sale of the Deaconess and Valley Hospitals to CHS, SWHC, and SVWHC. Under the Agreements, the Foundation stands in the shoes of the seller, Empire Health Systems, to enforce their terms and conditions.

10. When defendants purchased the Hospitals, they agreed to provide charity care and essential health services as required under Washington’s Charity Care Act and its Certificate of Need laws. These legal requirements are incorporated into the terms and conditions of the Agreements, by both the Agreements themselves and by state law. The requirements include the provision of charity care at an amount that meets or exceeds the regional average, and a prohibition against putting in place policies and procedures that serve to suppress or reduce the amount of charity care provided. RCW 70.38.115 (2)(j); RCW 70.170.060(1).

11. Defendants’ provision of charity care never “met or exceeded the regional average of charity care,” at any time since they purchased Deaconess and Valley Hospitals.

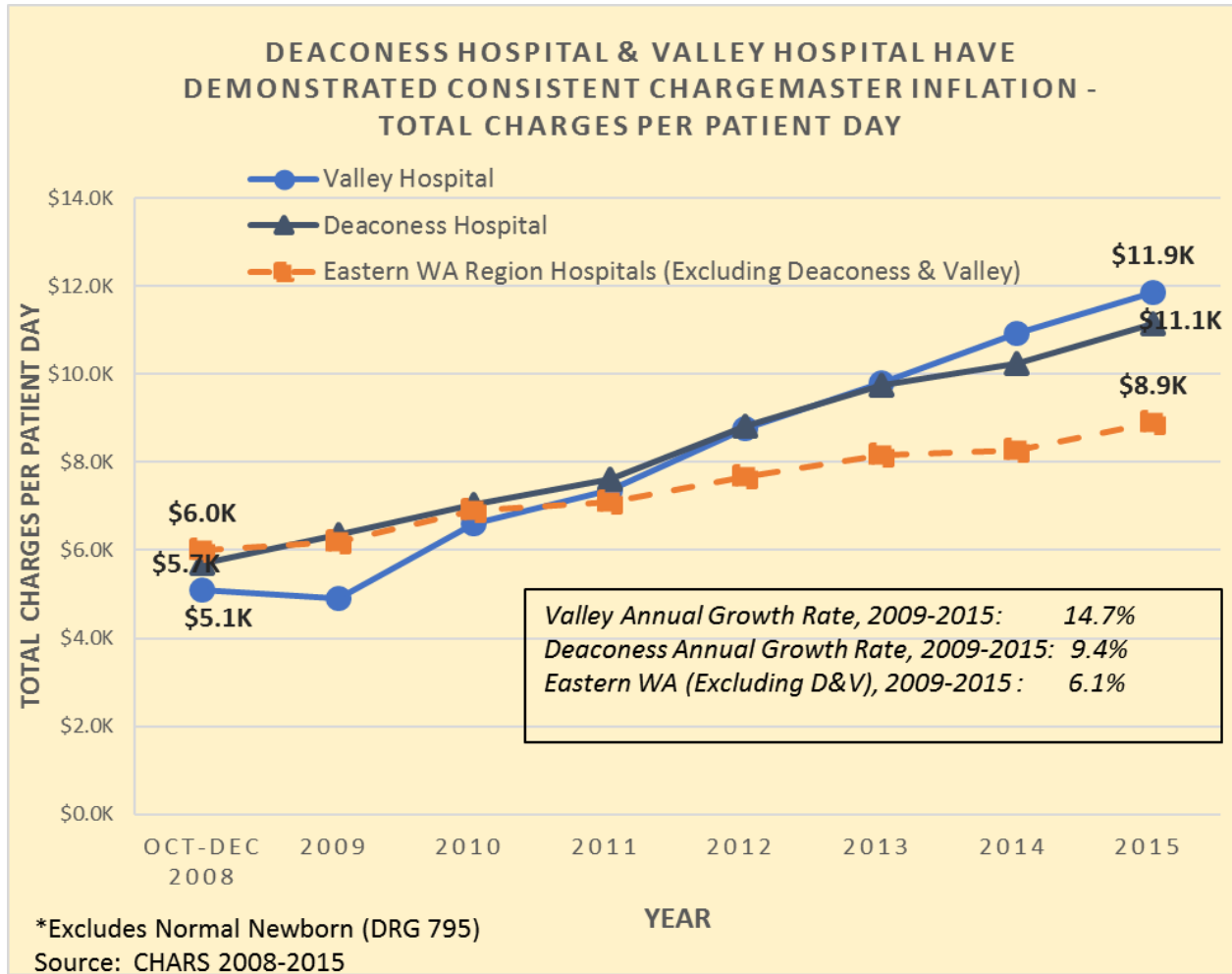
12. Based upon the data reported by Defendants to the Washington Department of Health, Defendants’ provision of charity care has failed to meet the

regional average by more than *\$55 million*, from September 2008 to December 2015. Based upon information and belief, Defendants' provision of charity care continues to fail to meet the regional average, continuing to the present.

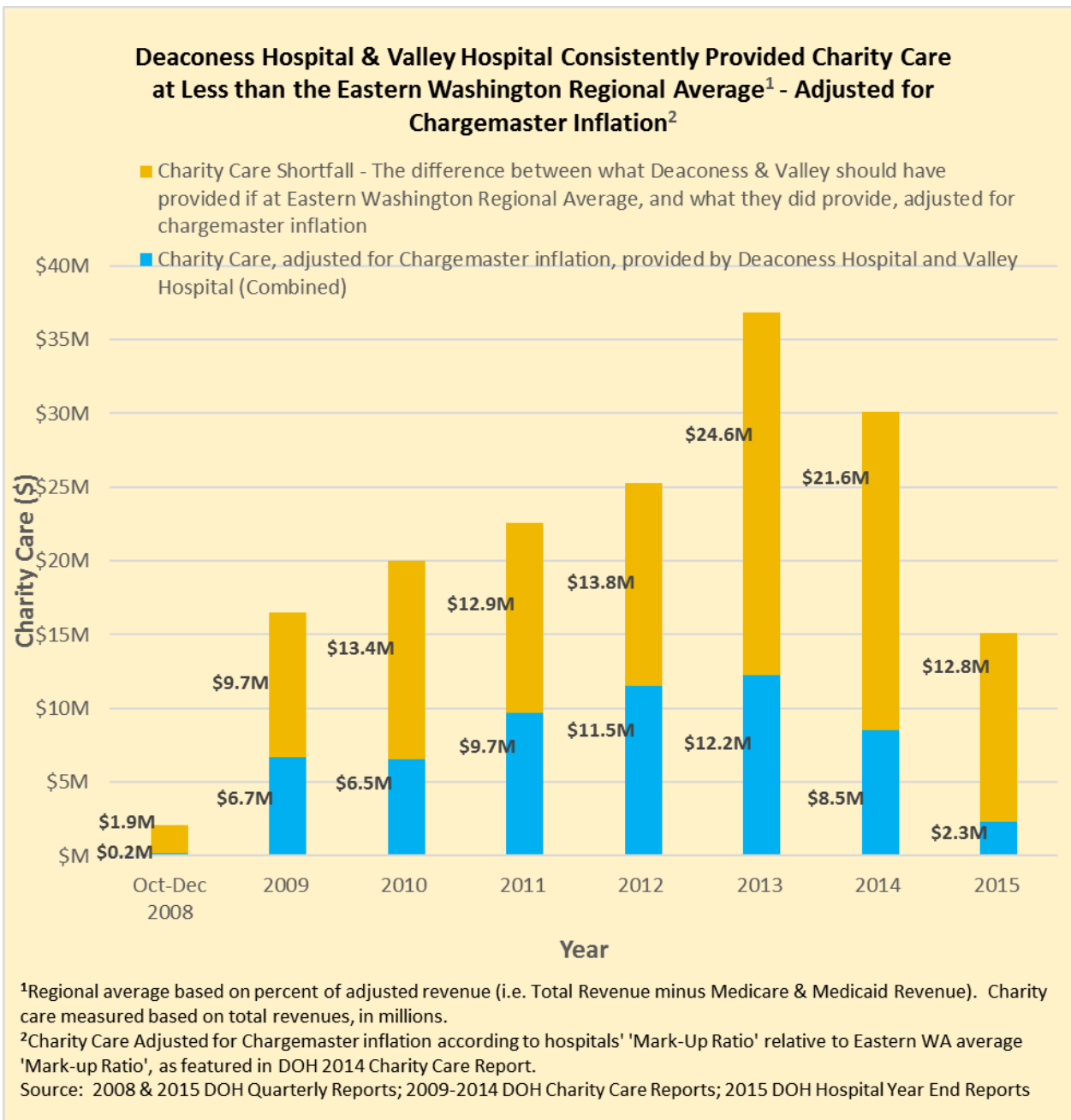


13. Defendants' reported provision of charity care may be excessively inflated. Starting in at least 2012, Defendants increased the prices charged to self-pay patients for services (commonly referred to as the "chargemaster") far above the rate of

medical inflation. Defendants' chargemaster was increased significantly more than that at the average regional hospital in the Spokane area. Defendants' inflated chargemaster also inflated Defendants' reported provision of charity care.



14. When Defendants' charity care reporting is adjusted to account for its excessive chargemaster inflation above that of the regional average, Defendants' provision of charity care falls short of the regional average by more than **\$110 million** from September 2008 to December 2015. Based upon information and belief, this shortfall, when adjusted for chargemaster inflation, continues to the present.



15. The failure to provide more than \$110 million in charity care benefits represents a significant loss of health care services that should have been, but never were, provided to residents of the Spokane Region. The loss of those benefits injured the Foundation which is dedicated to improving the health and health systems for residents of the Spokane region. Had Defendants provided \$110 million or more in

1 additional charity care benefits to the Spokane Region from 2008 to the present, the
2 Foundation would likely have made different grants and investments to improve the
3 region's health.

4 16. Defendants have breached the Agreements by failing to comply with
5 charity care requirements. Their policies and procedures have suppressed their
6 provision of charity care, and, taking the Hospitals together, Defendants have never
7 provided charity care that met or exceeded the regional average. Based upon
8 information and belief, Defendants have never undertaken "reasonable efforts" to
9 provide charity care at a level that meets or exceeds the regional average. The adoption
10 of excessively inflated chargemaster rates and charges masked, at least in part,
11 Defendants' deficient charity care program.

12 17. Defendants' practices and policies appear to be part of a planned effort to
13 drive indigent patients away from the Hospitals, and, if they nonetheless sought
14 services from the Hospitals, to overcharge them.

15 18. Defendants' practices and policies are also a breach of the implied duty of
16 good faith and fair dealing. Under the Agreements, Defendants had the discretionary
17 authority to determine when, how much, and who would receive the charity care
18 described in the Agreements. Defendants had an obligation to exercise that
19 discretionary authority in good faith. Defendants' use of excessively inflated
20 chargemaster rates that masked, at least in part, its deficient charity care program,
21 breached that duty.

22 19. Based upon information and belief, Defendants may have also breached
23 the Agreements in other ways, including but not limited to: the provision of care
24 through community-based health programs to address identified community needs and
25 improve the health status of the elderly, poor and at-risk populations in the community;
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1 the continuation of essential health services; and the provision of \$100,000,000 in capital
2 expenditures at the Hospitals.

3 20. This lawsuit seeks (1) injunctive relief and/or specific performance to
4 require Defendants to fully comply with the requirements of Agreements, which
5 incorporate the Washington Department of Health's Certificate of Need Conditions,
6 Washington's Charity Care Act and Certificate of Need requirements; (2) disgorgement
7 of all excess profits retained by Defendants as a result of its failure to comply with the
8 requirements of the Agreements, as modified by state law, including but not limited to,
9 its failure to provide at least the regional average of charity care to Spokane area
10 indigent patients; and (3) all other contractual and equitable relief available to Plaintiff
11 for Defendants' failure to provide charity care as required by the Agreements.

12 **IV. FACTUAL BACKGROUND**

13 21. In 2008, defendant SVWHC purchased Valley Hospital and SWHC
14 purchased Deaconess Hospital. CHS guaranteed all of the obligations of SWHC and
15 SVWHC under the Agreement. Prior to 2008, the Hospitals were owned and operated
16 by the nonprofit corporation Empire Health Systems.

17 22. As a condition of the sale, Defendants were (and remain) obligated to
18 provide charity care to indigent patients at a level that meets or exceeds the regional
19 average for hospitals in the Spokane region.

20 23. Defendants were (and remain) obligated to comply with all aspects of the
21 Charity Care Act, including the obligation to screen patients for indigency before
22 demanding payment for services.

23 24. Defendants were (and remain) obligated to continue to provide care
24 through community-based health programs in cooperation with local organizations that
25 sponsor healthcare initiatives to address identified community needs and improve the
26 health status of the elderly, poor and at-risk populations in the community.

1 25. Defendants were (and remain) obligated to continue to provide essential
2 health services at both hospitals, and to fund at least \$100,000,000 in capital
3 expenditures at the facilities.

4 26. Since Defendants purchased the Hospitals, they have not provided charity
5 care at a level that meets or exceeds the regional average. In fact, according to
6 Defendants' own reported data, their provision of charity care has fallen short of the
7 regional average by more than \$110 million from September 2008 to June 2016, when
8 adjusted to reflect Defendants' excessive chargemaster rate inflation.

9 27. Defendants' provision of charity care is so far from the regional average,
10 that it indicates that they put in place practices and procedures designed to avoid the
11 provision of charity care at the Hospitals. *See* RCW 70.170.060(1).

12 28. Based upon information and belief, Defendants' provision of care through
13 community-based health programs has also fallen, and it may not have continued to
14 provide essential health services as promised in the Agreement. Defendants may have
15 failed to fulfill its commitment to provide for community health services in other ways
16 as well.

17 29. CHS has announced a sale of the hospitals to Multicare Health System and
18 plans to sell its other Washington hospitals.

19 30. Before Defendants leave the State of Washington with their profits
20 generated from the provision of care to the Spokane region, they must provide the
21 value of the charity care services that they were required—but failed—to provide.

22 **V. FIRST CLAIM – BREACH OF CONTRACT**

23 31. The Foundation re-alleges all the paragraphs listed above.

24 32. Defendants breached the contract with the Foundation by (1) failing to
25 provide charity care at a level that met or exceeded the regional average, or at the very
26 least, failing to make "reasonable efforts" to provide charity care in an amount

1 comparable to or exceeding the regional average; (2) engaging in violations of the
2 Charity Care Act and its implementing regulations; and (3) other material breaches of
3 contract, including but not limited to, its failure to continue to provide care through
4 community-based health programs, and its discontinuation of certain essential health
5 services at the Hospitals.

6 33. The Foundation is entitled to damages for breach of contract including,
7 without limitation, declaratory and injunctive relief, specific performance, and
8 restitution/disgorgement.

9 **VI. SECOND CLAIM – BREACH OF IMPLIED DUTY OF GOOD FAITH AND**
10 **FAIR DEALING**

11 34. The Foundation re-alleges all the paragraphs listed above.

12 35. At all relevant times, Defendants had an implied duty of good faith and
13 fair dealing to fulfill their obligations under the Agreements so that each party could
14 obtain the contract's full benefit. Specifically, under the Agreements, Defendants had
15 the unilateral discretionary authority to determine the prices charged to indigent
16 patients, when and where they were informed about charity care, and the manner in
17 which charity care applications were provided. When they exercised this discretionary
18 authority, they were obligated to do so in good faith and with fair dealing. Defendants
19 breached their implied duty of good faith and fair dealing when they excessively
20 inflated the Hospitals' chargemaster rates far beyond that of other hospitals in the
21 region. Defendants' excessive chargemaster inflation had the effect of masking its
22 deficient charity care program, driving indigent patients from its Hospitals before they
23 received treatment, and overcharging the indigent patients who ultimately received
24 treatment at the Hospitals.

1 36. Plaintiff is entitled to damages for breach of the implied duty of good faith
2 and fair dealing, including, without limitation, declaratory and injunctive relief, specific
3 performance, and restitution/disgorgement.

4 **VII. DEMAND FOR RELIEF**

5 WHEREFORE, plaintiff requests that this Court:

6 1. Declare that Defendants must comply with the Agreement as modified by
7 Washington State's Charity Care and Certificate of Need laws and the Washington
8 Department of Health Certificate of Need conditions;

9 2. Enjoin Defendants from current and future breaches of (a) contract,
10 (b) the implied duty of good faith and fair dealing, and (c) violations of the Charity
11 Care Act and Certificate of Need law;

12 3. Order disgorgement of all funds retained by Defendants that should have
13 been provided as charity care and/or community benefits under the Agreement, the
14 Department of Health Certificate of Need conditions and consistent with Washington
15 law;

16 4. Enter judgment in favor of the Foundation in an amount to be proven at
17 trial due to Defendants' breach of contract and breach of the implied duty of good faith
18 and fair dealing;

19 6. Award the Foundation its attorney fees and costs under the Agreement;
20 and

21 7. Award such other relief as is just and proper.

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1 DATED: June 12, 2017.

2 SIRIANNI YOUTZ
3 SPOONEMORE HAMBURGER

4 By: s/ Stephen J. Sirianni

5 By: s/ Richard E. Spoonemore

6 By: s/ Eleanor Hamburger

7 Stephen J. Sirianni (WSBA #6957)

8 (Admitted, Eastern Dist. of Washington)

9 Richard E. Spoonemore (WSBA #21833)

10 (Admitted, Eastern Dist. of Washington)

11 Eleanor Hamburger (WSBA #26478)

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